* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ F.A.O. No.243/2003

% Date of Decision : 7th of September, 2007

\# M/s. HINDUSTAN PETROLEUM CORPORATION LTD. .....Petitioner

! Through : Mr. S.P. Singha, Adv.

versus

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UNION OF INDIA, THROUGH THE GENERAL MANAGER, NORTHERN RAILWAY, NEW DELHI .....Respondent

^ Through : Mr. R.C. Nangia, Adv.

* CORAM:
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: **B.N.CHATURVEDI, J.**

1. Present appeal arises out of orders dated 3rd April, 2002 and 23rd August, 2002 thereby dismissing appellant's application for amendment and its claim

application respectively.

2. The appellant booked a tank wagon No.CR-44518 containing 22900 litres of LDO (Light Diesel Oil) under Railway Receipt No.670280 and Invoice No.16 dated 24th June, 1994 from ACP Siding, Simaria (Barauni) to Shakurbasti, Delhi. Refinery Coordinator, Indian Oil Corporation Limited, Barauni Oil Refinery was consigner while the appellant Corporation happened to be the consignee. The said tank wagon arrived at destination station without top and bottom seals. A shortage of 17940 litres of LDO came to notice on a joint dip measurement being taken at IOC Siding by the railway staff and IOC representative. A notice dated 5th September, 1994 under Section 106 of the Railways Act, 1989 was served on the respondent by the appellant making a compensation claim for Rs.1,12,534/- @ Rs.6272 per kilo litre on account of short delivery, as aforesaid.

The notice so served was acknowledged by the respondent on 13th September, 1994. In the notice it was stated that the consignment/tank wagon was booked from Panki instead of ACP Siding, Simaria (Barauni). Even in the claim petition the forwarding station was mentioned as Panki instead of ACP Siding, Simaria (Barauni).

3. The respondent contested the appellant's claim inter alia on the plea that no tank wagon, as stated in the claim application, had been booked Ex. Panki to Shakurbasti, Delhi and therefore the claim application was not maintainable. The respondent also questioned the validity of the statutory notice served on it by the appellant.

4. The appellant later realized the mistake committed in mentioning the name of the forwarding station correctly and sought to rectify the same by seeking an amendment to its claim application. The

amendment application was however, dismissed by the Claims Tribunal holding that the same, if allowed, would change the cause of action. The Tribunal relied upon a decision of this Court in Thandi Ram Jai Narain Vs. Union of India & Anr.; **75 (1998) DLT 376** in this regard. Later, by an order dated 23rd August, 2002 deciding Issue No.1 on maintainability of the claim application, the Tribunal held that the petition was liable to be rejected as there was variance in proof and pleading which was fatal to the claim preferred by the appellant.

5. I have heard arguments from either side.

6. Learned counsel for the appellant contended that it was under mistake that the name of the forwarding station was incorrectly mentioned in the notice and that the same very mistake was carried through in the claim application as well. It was pleaded that being an inadvertent clerical mistake,

the same ought to have been allowed to be corrected by way of amendment. It was contended that while serving notice on the respondent, a copy of railway receipt correctly mentioning the name of the forwarding station was enclosed and thus inspite of the name of forwarding station being wrongly stated in the notice, the respondent was in a position to find correct name of the forwarding station to make out that the compensation was being claimed in respect of consignment which had been booked from ACP Siding, Simaria (Barauni) and not from Panki railway station. The learned counsel for the appellant with the help of two decisions of the Supreme Court in Raj Narain Vs. Smt. Indira Nehru Gandhi & Anr.; **(1972) 3 SCC 850** and B.K.N. Pillai Vs. P. Pillai & Anr.; **JT 1999 (10) SC 61** pleaded that the Claims Tribunal should have taken a liberal approach in allowing the amendment and that the same ought not to have

been disallowed on technicalities. In B.K.N. Pillai (supra) no doubt the Supreme Court held that all amendments in the pleadings should be allowed which are necessary for determination of the real controversies in the suit, at the same time an exception was made by providing that where the proposed amendment would alter or substitute a new cause of action on the basis of which the original lis was raised, the same was liable to be disallowed.

7. The decision of this court in Thandi Ram (supra) which was relied upon by the Claims Tribunal to disallow the amendment was a case where the claimant had mentioned the date of booking of consignment incorrectly in the notice as also in the claim petition and the mistake in the claim application was sought to be remedied by seeking an amendment which was however not granted and on a petition being filed challenging the order disallowing

the amendment, the same was dismissed as the mistake was reckoned as a vital defect. It was held that service of statutory notice being a condition precedent the claim petition could not be maintainable in the absence of a proper notice. Service of notice was held to be part of cause of action and where the cause of action was alleged to have had arisen on a different date and the claim application was sought to be amended for a cause of action arising on a different date, in the absence of notice it was held that there was no cause of action. In the present case instead of date of booking of consignment it is the name of the station wherefrom the consignment was booked that had been incorrectly mentioned in the notice as also in the claim petition. Enclosing railway receipt carrying the name of the forwarding station from where the consignment had actually been booked could not

have made up for factual error committed in mentioning the name of forwarding station in the notice correctly. The copy of railway receipt attached to the notice was intended to be supportive of the facts stated in the notice and in the event of variance on material particulars, the notice would be a defective one and could not be taken to satisfy the condition of being a proper notice. The proposed amendment sought by the appellant to correct the name of forwarding station in its claim application, even if allowed, could not have saved it from rejection for want of a proper notice. Thus, no fault can be found with the order dated 3rd April, 2002 disallowing the amendment. Since according to the appellant itself the consignment in question had not been booked from Panki and the evidence produced by it rather showed that the same had in fact been booked from Barauni railway station, the Tribunal rightly

held that there was variance in proof and pleading which was fatal to the claim of the appellant. The rejection of the claim petition was, in the circumstances, the obvious result which warrants no interference. The appeal is thus, dismissed.

(B.N.CHATURVEDI)

September 7, 2007 JUDGE

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